

United States District Court

For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 WANXIA LIAO, No. C 05-1888 CW
14 Plaintiff, ORDER DENYING
15 v. PLAINTIFF'S MOTION TO STAY
16 RONALD QUIDACHAY, et al., PROCEEDINGS ON DEFENDANTS' MOTION TO DISMISS
17 Defendants

As stated in the Court's earlier orders, this complaint is based on an underlying civil rights lawsuit brought in state court by Plaintiff against James Cahill, a former professor at the University of California. Plaintiff seeks declaratory and injunctive relief and monetary damages for her constitutional claims under 42 U.S.C. § 1983 and for her State law claim of intentional infliction of emotional distress based on her allegations that various state court judges, justices, and court

United States District Court
For the Northern District of California

1 staff have acted to deprive her of her right to due process in
2 their handling of her state court lawsuit.

3 On October 12, 2005, the Court granted Defendants' motion to
4 dismiss the First Amended Complaint (FAC) with leave to amend and
5 instructed Plaintiff that she had to properly serve the Second
6 Amended Complaint (SAC) on Defendants. On October 22, 2005,
7 Plaintiff filed a document entitled "Declaration to Disqualify
8 Judge Wilken," requesting that the undersigned recuse herself from
9 the case. On November 15, 2005, the Court denied the motion,
10 holding that Plaintiff's allegations of impartiality were
11 insufficient as a matter of law. On November 27, 2005, Plaintiff
12 filed a document entitled "Supplemental Declaration of Bias and
13 Prejudice of Judge Wilken."

14 Plaintiff filed her Second Amended Complaint (SAC) on November
15 1, 2005. To date, Plaintiff has not filed proof of service of the
16 SAC and Defendants have not filed an answer.

17 On September 11, 2006, the Court ordered Plaintiff to file,
18 within twenty days of the order, proof that she had properly served
19 Defendants, or that she had asked them to waive service. In
20 response to the order, Plaintiff filed a document entitled "Motion
21 for Revocation of Order; for Re-Assignment of Case," which the
22 Court interpreted as a motion for leave to file a motion for
23 reconsideration of both the Court's Order Denying Plaintiff's
24 Request for Recusal and the Court's Order for Plaintiff to File
25 Proof of Service.

26 On October 25, 2006, the Court denied the motion and again
27 ordered Plaintiff to file proof of service within twenty days of
28

United States District Court

For the Northern District of California

1 the order and warned that it would dismiss her case for failure to
2 prosecute if she did not. On November 3, 2006, Plaintiff purported
3 to file an interlocutory appeal to the Ninth Circuit of this
4 Court's order.

5 On November 17, 2006, Defendants filed in this Court a motion
6 to dismiss the action, for failure to state a claim and because
7 Plaintiff failed to comply with the Court's order. In response,
8 Plaintiff filed the present motion.

9 Plaintiff moves for an emergency stay of the Court's October
10 25, 2006 order denying her motion for reconsideration of the
11 Court's denial of her request for recusal. She argues that the
12 issue of recusal must be decided before this Court can address
13 Defendants' motion to dismiss. Further, Plaintiff alleges that she
14 did not receive the motion to dismiss until November 21, 2006, and
15 therefore that it is improperly scheduled to be heard on December
16 22, 2006.

17 As the Court has stated in its previous orders on the matter,
18 it was permitted to, and did, rule on the sufficiency of
19 Plaintiff's allegations of bias and prejudice and found them
20 insufficient. Therefore, the Court DENIES Plaintiff's motion to
21 stay these proceedings pending appeal (Docket No. 40). The Court
22 will consider Defendants' motion to dismiss. The Court notes that
23 on October 25, 2006, it warned Plaintiff that her case would be
24 dismissed with prejudice for failure to prosecute if she did not
25 file proof of service on Defendants within twenty days and that
26 Plaintiff has not done so. However, out of an abundance of
27 caution, it allows Plaintiff an additional opportunity to oppose
28

1 Defendants' motion to dismiss.

2 Plaintiff's opposition to Defendants' motion to dismiss shall
3 be filed by December 22, 2006. If Defendants wish to file a reply
4 to Plaintiff's opposition, they shall do so by December 29, 2006.
5 The matter will be decided on the papers. The December 22, 2006
6 hearing is VACATED.

7 Additionally, the Court again instructs Plaintiff to file
8 proof that she mailed copies of the SAC to the attorney of record
9 for Defendants the Honorable Ronald Quidachay, the Honorable Paul
10 Alvarado and Maura Ramirez and that she properly served Defendants
11 the Honorable Laurence Kay, the Honorable Timothy Reardon, the
12 Honorable Patricia Sepulveda, the Honorable Maria Rivera, and the
13 Honorable Ronald George. If Plaintiff fails to provide such proof
14 by December 22, 2006, the SAC will be dismissed for failure to
15 prosecute.

16 IT IS SO ORDERED.

17
18 Dated: 12/14/06

Claudia Wilken

CLAUDIA WILKEN
United States District Judge

20
21
22
23
24
25
26
27
28